

## REMARKS

A new copy of the oath from the parent application is included herewith.

### 35 U.S.C. 103§(a) rejections

Claims 13-16 and 31-35 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Stock (U.S. 3,825,465) in view of Kinney (U.S. 312,864). Withdrawal of the rejection is respectfully requested in view of the following remarks.

Applicant contends that the Examiner has not established a prima facie case of obviousness. It is well established that a prima facie case of obviousness requires that the reference teachings suggest the claimed subject matter and not simply the general aspects of the invention. Furthermore, when more than one reference is employed to establish the obviousness rejection the prior art teachings must be sufficient and suggest to one skilled in the art that the substitution, combination or modification can or should be made. Thus, the Federal Circuit has stated that "[o]bviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching suggestion or incentive supporting the

combination." See *In re Geiger*, 815 F.2d 686, 2 USPQ 2d 1276, 1278 (Fed. Cir. 1987).

Stock teaches "a three dimensional shape with a reticulated pattern of apertures in a plurality of generally planar surfaces transverse to the plane of the sheet material before expansion." (col. 1, lines 67-70) The apertures align to allow receipt of reinforcement members such as tubular members therethrough. In the present invention as claimed in claims 13-16, the sheet includes slits transverse to a longitudinal dimension and is expanded longitudinally to form cells. This structure inherently cannot have apertures in a plurality of generally planar surfaces transverse to the plane of the sheet material. In other words, Stock has apertures overlying one another to allow receipt of a tube therethrough. The present invention as claimed does not and cannot have this feature. Thus, the structure as claimed in claims 13-16 and the structure taught by Stock are different.

Stock teaches that the sheet of material has slits therein of two different lengths (col. 2, lines 50-52). With respect to the present invention as claimed in claims 31-35, the slits are each of the same length. This is a substantially different structure, as the two different

length slits of Stock appear to be required for the construction of the three dimensional structure.

Stock teaches that the three dimensional structure is formed from the sheet "by pressing with dies that are moved perpendicular to the sheet." (col. 3, lines 40-42) In the present invention as claimed in claims 13-16 and 31-35, the sheet is longitudinally expanded not perpendicularly expanded by dies as taught by Stock. This is a substantially different process and will result in a different structure as described previously.

Additionally, Stock teaches a plastic material such as plaster or concrete being used to fill the apertures. Stock also teaches that the plastic material can be various organic plastics. Stock is quite specific on the material used, and does not suggest that tar and sand be used as claimed in claims 13-16 and 31-35 of the present application. Stock does teach the use of tar. However, the use is not as filler for the apertures, but as a stiffening coating for non-metal material. When other materials such as paper or plastics are used for the sheet material, they can be impregnated or sprayed with resins or tars. These are used to impart stiffness to the material, and not employed to fill the apertures. Since Stock specifically

teaches the use of tar for stiffening material, but not for filling the apertures, the use of tar for filling the apertures is clearly not recognized or suggested. Furthermore, there is no suggestion that sand be employed at all.

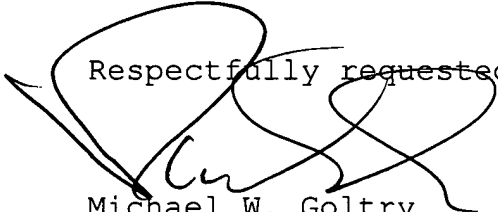
Kinney teaches metallic fencing. The entire purpose of the invention is to provide "an open framework of great strength and stiffness" (col.3, lines 30-32) for use as fencing or platforms, grating, screens etc. The key term here is "open framework". It is clear from the teaching that closing any of the openings, such as with tar and sand, would render the device inoperable for its intended purpose. Therefore it cannot suggest the present invention as claimed in claim 13-16 and 31-35. Additionally, the structure taught by Kinney gains its strength by corrugating the sheet material. Without corrugations, the device again is rendered inoperable for its intended purpose.

Additionally, the combination of Stock and Kinney is improper as there is no suggestion that the combination can or should be made. The slits transverse to the longitudinal axis as taught by Kinney, contrary to the Examiner's assertion, cannot be employed for the device of Stock since it would prevent the formation of apertures in a plurality

**SUMMARY**

Since none of the applied references teach or suggest applicant's claimed structure and since the combination of the applied references is improper since there is no suggestion or motivation therefore, applicant believes that claims 13-16, and 31-35 are in condition for allowance. Withdrawal of the rejections and allowance of the claims is respectfully requested. Should there be any questions or remaining issues, Examiner is cordially invited to telephone the undersigned attorney for a speedy resolution.

Respectfully requested,

  
Michael W. Goltry  
Attorney for Applicant  
Registration No. 39,692

3 May 2006

**CN 45848**

4000 North Central Ave.  
Suite 1220  
Phoenix, Arizona 85012  
(602) 252-7494

of generally planar surfaces transverse to the plane of the sheet material before expansion. This specific structure is required by Stock in order to receive reinforcement members therethrough. The structure of Kinney does not permit this structure, and therefore the substitution would render the device of Stock inoperable for its intended purpose. Since the substitution would not work, there clearly is no suggestion or motivation to make the substitution.

Therefore, since each of the cited references fail to render the invention as claimed in claim 13-16 and 31-35 unpatentable individually, and the combination thereof is improper, the present invention as claimed is not obvious in view of Stock and Kinney.